

# COURTHOUSE NEWS

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A Summary of Topical Highlights from decisions of the  
U.S. District Court for the District of Oregon  
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## Arbitration

Judge Stewart granted defendant's motion to dismiss or in the alternative to abate and compel arbitration by first holding that the court is empowered under § 2 of the Federal Arbitration Act to determine the validity of the Arbitration Provision. In applying Oregon law to determine the validity of the Arbitration Provision, Judge Stewart recognized a lack of Oregon law addressing unconscionability of employment contracts. Judge Stewart held it is unnecessary to determine whether Oregon would adopt the California test, because even under the California test, Roque could only establish procedural unconscionability.

The Arbitration Provision was not substantively unconscionable under Oregon or California law because it did not lack mutuality of obligation. Finally, despite the injunctive relief exceptions in favor of the employer, the Arbitration Provision excluded several specific claims an employee could bring, such as workers and unemployment

compensation claims. Because the exemptions flow to both sides, the parties' obligations are mutual even under California law.

Roque v. Applied Materials,  
CV 03-1564-ST  
(Findings and  
Recommendation, February 20,  
2004, adopted by Judge Brown,  
June 1, 2004)  
Plaintiff's counsel: Richard  
Busse  
Defense counsel: Carol  
Noonan

## Criminal Law

Judge Brown presided over a criminal court trial involving the collapse of Capital Consultants, Inc. (CCI), a Portland investment management company, and the impact of its collapse on ERISA union trusts that invested funds through CCI. The charges against the defendants were for unlawful giving and receiving gratuities in violation of 18 U.S.C. 1954, wire fraud and obstruction of justice. The court found defendant Dean Kirkland guilty of 13 counts of wire fraud, one

count of obstruction of justice, and 13 counts of unlawfully giving gratuities to a co-defendant. The court found defendants Gary Kirkland and Robert Legino not guilty of all counts charged.

USA v. Kirkland et al  
CR 02-350-BR  
(Opinion, June 15, 2004)  
Govt Counsel: Neil Evans  
Defense Counsel: Andrew  
Wright, Stephen Houze, James  
Rice

## Employment

Plaintiff filed an action claiming that he was forced into medical retirement when his employer refused to transfer him to a non-supervisory position as a reasonable accommodation for a variety of stress-related disabilities. Judge Hogan granted a defense motion for summary judgment on the basis that the plaintiff failed to demonstrate that he was "otherwise qualified" to perform any job with the employer either with or without accommodation. The court also held that the plaintiff failed to demonstrate that he suffered any adverse

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employment action.

Stamos v. Potter,

CV 03-6107-HO

(Order, Sept. 21, 2004)

Plaintiff's Counsel: Larry Linder

Defense Counsel: James

Sutherland

### First Amendment

Judge Haggerty granted defendant's motion for summary judgment on plaintiffs' First Amendment free speech claims. Plaintiffs were ten members of the varsity boys' basketball team. They wrote a letter to the principal and athletic director complaining of their coach's behavior and that they did not feel comfortable continuing to play for him. Plaintiffs were eventually suspended from the team. They filed a First Amendment claim alleging retaliation for their complaints concerning the coach. The court concluded that plaintiffs' speech was not constitutionally protected. Alternatively, the court held that even if plaintiffs' speech was protected, the school district's actions were allowed because plaintiffs' speech caused a "substantial and material disruption" to the work of the school.

Pinard v. Clatskanie School Dist.

CV 03-172-HA

(Opinion, June 3, 2004)

Plaintiffs' Counsel: Michael Seidl

Defense Counsel: Peter

Mersereau

### Employment

Plaintiffs filed an action alleging disability and age discrimination. Defendants Guardsmark and Boise Cascade moved for summary judgment. Judge Aiken granted Boise Cascade's motion for summary judgment, and denied Guardsmark's motion for summary judgment.

Plaintiffs were employed by Pinkerton Security as security officers at a Boise Cascade lumber mill in St. Helens, Oregon. Plaintiffs were later terminated. Regarding plaintiffs' ADA claim, Judge Aiken found that questions of fact exist as to (1) what the essential functions of a security officer at the Boise Cascade St. Helens site were; and (2) whether plaintiffs were qualified to perform these functions.

Regarding plaintiffs' ADEA claim, the court found that in order for plaintiffs to meet their prima facie burden under the ADEA, it is first necessary to resolve the disputed issue of material fact as to which criteria shall be used to define the "essential functions" of the security officer position at the St. Helens site.

Finally, the court granted Boise Cascade's motion for

summary judgment finding that Boise Cascade is not liable for Guardsmark's allegedly discriminatory conduct based on the theories of joint or indirect employer liability, or agency liability.

Boyer et al. v. Guardsmark and Boise Cascade, Inc.

CV 02-1581-AA

(Opinion, April 23, 2004)

Plaintiffs' Counsel: Craig Crispin

Defense Counsel: Charles Siegal

### Standing

Plaintiff, a graduate student at the University of Oregon, sought declaratory and injunctive relief for violation of state statutes regulating firearm possession, and violation of substantive due process rights. The court found that plaintiff lacked standing and this court lacked federal jurisdiction over plaintiff's claims under either Article III of the United States Constitution or the Declaratory Judgment Act. The court granted defendants' motion to dismiss the case.

Stubbs v. Goldschmidt et al.,

CV 04-6029-AA

(Opinion, June 29, 2004)

Plaintiff's Counsel: Kristian Roggendorf

Defense Counsel: Charles Fletcher

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